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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MAUREEN A. RIDDLE,

Plaintiff and Appellant,

v.

NELSON RIDDLE, III, et al.,

Defendants and Respondents.

B265169

(Los Angeles County
Super. Ct. No. BC514083)

APPEAL from a judgment of the Superior Court of Los Angeles County. Richard Rico, Judge. Affirmed.

Maureen A. Riddle, in pro. per. for Appellant.

Hamburg, Karic, Edwards & Martin, Gregg Martin and David M. Almaraz for Respondents.

Maureen Riddle appeals from the summary judgment entered in favor of her five siblings in this action for their alleged concealment of the estate assets of their deceased parents. We affirm.

FACTS AND PROCEDURAL HISTORY

1. *Background Facts*

Maureen Riddle sued her five siblings – Nelson Riddle III, Rosemary Riddle Acera, Christopher Riddle, Bettina Riddle Bellini, and Cecily Riddle Finnegan – alleging that they concealed the assets left behind after their parents died. Their father, music composer and arranger Nelson Riddle, Jr., and their mother, Doreen Riddle, divorced in 1970. Father remarried a few months later.¹

Mother died in April 1980. Her will was admitted to probate by the lawyer for named executor Erwin Roeder. The will provided for the relatively equal distribution of mother's personal effects, and equal shares of the remainder of her estate, among the six children. After Roeder died in June 1981, Christopher was appointed administrator with limited power, and then administrator with will annexed, in order to close out the probate of mother's estate.

Counsel for the estate prepared documents that led to a final distribution order by the probate court. That order stated that all notices of the probate action had been properly given. The order approved a final estate value of \$311,806, with \$160,000 of that coming from the sale of mother's home. The probate was closed in 1982, and, according to

¹ For ease of reference, we will refer to Nelson Riddle, Jr. and Doreen Riddle respectively as father and mother and collectively as parents. We will refer to their six children – the parties to this action – individually by their first names and collectively as defendants. We will refer to father's second wife as stepmother.

Christopher, all remaining assets were distributed equally among the siblings. These included continuing royalty payments over the years from an account held at BMI, a musical rights company. Maureen never objected to the accounting or final report.

In 1984, father and stepmother established the Riddle 1984 Trust, which provided that after stepmother died, all remaining trust assets would be held equally by the siblings. Father died in 1985 and stepmother died in 1998. City National Bank served as trustee until it was removed in 2005 following resolution of an action alleging that a third party had siphoned off royalty payments from father's musical compositions. As part of that move, all six siblings released City National Bank from liability for any other acts or omissions concerning its handling of the trust. Rosemary then took over as trustee. The trust's primary source of income comes from royalties such as those handled by the BMI account.

2. *Maureen's Complaint*

In July 2013, Maureen sued her siblings, the trust, and a related business entity for fraud. Her operative third amended complaint stated several causes of action all based on the same two theories. First, that her siblings conspired to defraud her out of asset's from mother's estate, and did so by telling her that mother died without a will and had few assets save her one-half interest in the BMI account. As a result, she received none of her mother's personal possessions, received less from the sale of mother's home than she was entitled to, and was prevented from learning that the estate had rights in other royalty accounts. Second, that her siblings conspired to

conceal from her the true amount of royalty payments recouped by the trust each year, thereby paying her less than she should have received.²

3. *The Summary Judgment Motion*

Defendants moved for summary judgment, contending there was no evidence of wrongdoing or damages and that Maureen's claims were barred by the doctrine of res judicata to the extent they were based on conduct covered by the final probate order for mother's estate. Each defendant denied taking part in any conspiracy or otherwise acting to defraud Maureen.

Christopher's declaration stated that he was brought into mother's probate action late in the game after the executor died. Both before and after that time, he relied on the estate's lawyers to prepare all documents, send all required notifications, and otherwise manage the disposition of mother's estate. Mother's personal belongings had been distributed before he became administrator. As far as he knew, Maureen had been properly notified of the probate action, and he made a full and equal distribution of the estate's assets after becoming administrator. The only income producing asset available to mother's estate has been the BMI account. He and the other defendants never told Maureen that their mother died without leaving a will.

² Based on these allegations, the third amended complaint contained causes of action for fraud by both concealment and misrepresentation, breach of fiduciary duty, conspiracy, "aiding and abetting" breach of fiduciary duty, and for an accounting and imposition of a constructive trust over wrongfully concealed assets.

Maureen has alleged numerous machinations by which this was accomplished, including deceiving her into allowing for a majority vote to approve trust decisions, the appointment of Rosemary as successor trustee, and defendants' decision not to pay for an independent audit of father's royalties. Those details are irrelevant to our analysis and our focus on evidence concerning whether misrepresentations or damage occurred, and we therefore do not discuss them.

Attached as exhibits to defendants' motion were the final reports and distribution order in mother's probate case, which included statements by the court that all parties had been properly notified and all distributions had been properly made. Although the documents do not include a proof of service, one does list an address for Maureen at Sarah Lawrence College in New York, which she attended at the time.

Rosemary's declaration stated that after becoming trustee in 2005, she sent quarterly reports to her siblings, including Maureen. Attached as an exhibit was one such report from 2009. Maureen said that these reports were true and accurate and accounted for all the trust's income, which came primarily from royalty accounts such as BMI, along with a negligible amount from other sources. She and her siblings never conspired against Maureen, never concealed trust assets or income from her, and always paid her an equal share of the assets. In 2010, Rosemary notified all organizations responsible for paying royalties on the use of father's musical work to send a 1/6th share directly to Maureen, with the remainder going to the trust.

Maureen's opposition declaration was conclusory and lacking in details. In sum, she stated that the "emotional discord" among her and defendants that she believed arose from family issues was instead due to defendants' conduct in fraudulently concealing and misrepresenting the extent of parents' assets. She stated without further elaboration that she learned in October 2014 that she had been "[n]oticed incorrectly" on all court filings related to parents' estates and therefore had no other access to information about stepmother's probate, the City National Bank dispute concerning the third party diversion of trust assets, and the actual income of the trust. She agreed to have Rosemary take a more active role in the trust because she believed Rosemary was doing no more than asking questions of record

companies obligated to make royalty payments. She relied on defendants because she loved and trusted them and believed they had superior knowledge of the music industry.

However, almost all of Maureen's declaration was stricken by the trial court after it sustained defendants' evidentiary objections on several grounds. As a result, she was effectively left without an opposition declaration, a ruling that she does not challenge on appeal.³

Maureen's summary judgment opposition included numerous exhibits. Many were family cards and photos. Some were hostile and acerbic exchanges between her and defendants concerning the trust. A few purported to show the existence of concealed assets, a topic we will discuss in section 2.

The trial court found that: (1) Maureen had been properly notified of mother's probate action and therefore could not challenge the probate court's final order; (2) Maureen failed to produce admissible evidence to support her concealment and misrepresentation claims; (3) Christopher had not been a fiduciary because he had served only as an administrator, not an executor; (4) Rosemary did not become a fiduciary until taking over as trustee of father's trust in 2006, and had made equal distributions to all the siblings; (5) Maureen's conclusory declaration and evidence were improperly authenticated and failed to show that assets had been concealed; and (6) all other claims failed because they were derivative of the others.

STANDARD OF REVIEW

Summary judgment is granted when a moving party establishes the right to the entry of judgment as a matter of law. (Code Civ. Proc., § 437c,

³ Although Maureen had counsel earlier in the proceedings, it appears that she has represented herself since the time of the summary judgment motion.

subd. (c).) In reviewing an order granting summary judgment, we must assume the role of the trial court and re-determine the merits of the motion. In doing so, we must strictly scrutinize the moving party's papers. The declarations of the party opposing summary judgment, however, are liberally construed to determine the existence of triable issues of fact. All doubts as to whether any material, triable issues of fact exist are to be resolved in favor of the party opposing summary judgment. While the appellate court must review a summary judgment motion by the same standards as the trial court, it must independently determine as a matter of law the construction and effect of the facts presented. (*Dominguez v. Washington Mutual Bank* (2008) 168 Cal.App.4th 714, 719-720.)

The pleadings determine the issues to be addressed by a summary judgment motion and the declarations filed in support of such a motion must be directed to the issues raised by the pleadings. (*Knapp v. Doherty* (2004) 123 Cal.App.4th 76, 84.) A defendant moving for summary judgment meets its burden of showing that there is no merit to a cause of action if that party has shown that one or more elements of the cause of action cannot be established or that there is a complete defense to that cause of action. (Code Civ. Proc., § 437c, subds. (o)(2), (p)(2).) If the defendant does so, the burden shifts back to the plaintiff to show that a triable issue of fact exists as to that cause of action or defense. In doing so, the plaintiff cannot rely on the mere allegations or denials of his pleadings, "but, instead, shall set forth the specific facts showing that a triable issue of material fact exists" (Code Civ. Proc., § 437c, subd. (p)(2).) A triable issue of material fact exists "if, and only if, the evidence would allow a reasonable trier of fact to find the underlying fact in favor of the party opposing the motion in accordance with

the applicable standard of proof.” (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 850.)

DISCUSSION

1. *Defendants Met Their Initial Summary Judgment Burden*

Maureen contends that summary judgment was unwarranted because defendants never produced enough evidence to shift to her the burden of producing responsive evidence. We disagree. Defendants’ declarations contained statements of personal knowledge that rebutted the actionable allegations of the third amended complaint: that Maureen was notified of mother’s probate action, received her equal share of all the estate assets, was fully informed of the status of father’s trust throughout the years, and received her equal share of all the trust’s income.

These were supported by documents such as the probate filings and final order and a quarterly report sent to Maureen that Rosemary said was representative of the others Maureen received. More evidence might have made for a stronger showing, but this was enough to shift to Maureen the burden of producing rebuttal evidence that raised a triable issue of fact concerning her allegations.

2. *Maureen Failed to Raise Triable Issues of Fact*

The elements of a cause of action for fraud are: (1) a misrepresentation, which includes a concealment or nondisclosure; (2) knowledge that the misrepresentation was false; (3) intent to induce reliance on the misrepresentation; (4) justifiable reliance by the plaintiff; and (5) resulting damage. (*Cadlo v. Owens-Illinois, Inc.* (2004) 125 Cal.App.4th 513, 519.) Because each of Maureen’s causes of action depends on proof that defendants defrauded her, a failure to raise a triable issue of fact on her fraud claims is necessarily fatal to the others.

In order to prevail, Maureen must raise triable issues of fact concerning all or some of the following: (1) her siblings lied to her about the existence of mother's will and the ensuing probate action; (2) they lied about the sale price of mother's home and gave her less than her share of the true sale price; (3) they lied about the BMI account being the sole source of royalty income in mother's estate, and as a result kept from her income derived from other accounts; (4) they lied to her about the royalty income received by father's trust over the years and therefore underpaid her.

We begin with the trial court order that effectively eliminated Maureen's declaration in opposition to the summary judgment motion. Absent that, there are no affirmative, evidentiary statements from Maureen rebutting defendants' evidence. That leaves us with the stack of documents that Maureen included with her summary judgment opposition as either exhibits or requests for judicial notice.

In regard to her claims concerning father's trust, Maureen's appellate briefs cite a handful of documents to support her claims, but overlooks that the trial court struck some of them on various evidentiary grounds. These include: (1) exhibit 14, 1999 and 2000 quarterly royalty payment reports from Warner Bros. records; (2) exhibit 15, a United States Copyright Office website printout concerning the copyright of several of father's recordings; and (3) exhibit 23, which includes several letters and documents, including a letter from Rosemary confirming Maureen's right to a 1/6th share in father's trust, and a "PeopleMap" report listing Rosemary as the owner of something known as Nelson Riddle Music with sales of \$5 million to \$10 million.⁴

⁴ Maureen contends that the trial court erred by considering defendants' evidentiary objections because they were not filed five days before the hearing. This contention fails for two reasons. First, although a moving party's summary judgment reply papers must be filed five days before the

That leaves her exhibits 16 through 19, a mix of documents that include virtually identical letters to Sony Music and Warner Bros. concerning her interests in father's trust and mother's estate, change of payee forms for direct payment to Maureen of her share of the royalties, a 2011 cash receipts accounting for father's trust, a Warner Bros. royalty statement from 2013, and a check from Linda Ronstadt for \$11.83 payable to Maureen. Nothing in these documents shows how much Maureen received from father's trust over the years, much less the existence of any difference between what she received and what the trust actually collected. In short, there is no evidence that defendants either concealed anything from her, or that she was damaged in any way.

As for her rights under mother's estate, Maureen is equally hampered by the effective absence of an opposition declaration rebutting defendants' declarations that she was notified of the probate proceedings, received her equal share of mother's assets, and that mother's one-half interest in the BMI account has been the only income generating asset of the estate.

Furthermore, the trial court struck from Maureen's summary judgment opposition papers unsupported factual assertions that she received none of mother's personal effects and did not receive her 1/6th share of the royalties and other assets, that Christopher failed to notify her of the probate action and that she did not know of that action, and that Christopher violated various Probate Code requirements by failing to properly distribute mother's assets.

hearing (Code Civ. Proc., § 437c, subd. (b)(4)), evidentiary objections are waived only if not made "at the hearing." (Code Civ. Proc., § 437c, subd. (b)(5).) Second, defendants' written objections were file stamped by the court on June 10, 2015, which was exactly five days before the hearing.

Maureen's appellate brief also improperly cites to various iterations of her pleadings as support for her fraud claims concerning mother's estate. (Code Civ. Proc., § 437c, subd. (p)(2).) As best we can tell, Maureen has cited only one admissible document to support her claim: her April 2011 letter to the Los Angeles County Records Center seeking a copy of mother's will, along with an obscured and only partially legible document that Maureen claims shows the will could not be located. These documents do not address the issue of whether Maureen was aware of the will and the probate action in 1981, or whether she received what she was entitled to from mother's estate.

In short, there is no admissible evidence in the record that raises a triable issue of fact whether the probate action was concealed from Maureen or that she received less than she should have. As a result, summary judgment was proper.⁵

DISPOSITION

The summary judgment is affirmed. Respondents shall recover their costs on appeal.

RUBIN, J.

WE CONCUR:

BIGELOW, P. J.

GRIMES, J.

⁵ Because we affirm on this basis, we do not reach the other issues raised by the parties, including res judicata, the statute of limitations, or the existence of a fiduciary duty by any of the individual defendants. We also reject Maureen's contention that the trial court violated Code of Civil Procedure section 438, subdivision (g)(1) because it granted summary judgment after having previously overruled in large part defendants' earlier demurrer to the second amended complaint on the same grounds. Instead of diving into the circumstances surrounding that demurrer, it is enough to note that the section upon which Maureen relies applies to motions for judgment on the pleadings following an earlier demurrer, and does not apply to summary judgment motions.